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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,867	06/15/2001	Pierre Carol	109326	6258

25944 7590 07/21/2004

OLIFF & BERRIDGE, PLC  
P.O. BOX 19928  
ALEXANDRIA, VA 22320

EXAMINER

KALLIS, RUSSELL

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

CC

**Advisory Action**

Application No.

09/807,867

Applicant(s)

CAROL ET AL.

Examiner

Russell Kallis

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 17 June 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☒ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 20 and 25.

Claim(s) rejected: 14, 15, 21, 24, 26 and 29.

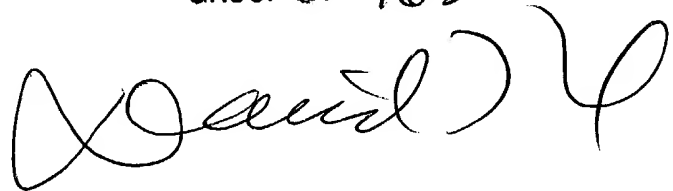
Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The recitation in Claims 14 and 15 of 'a nucleotide sequence encoding a protein having equivalent enzymatic activity to the enzyme represented by SEQ ID NO: 2' is broader in scope than the original recitation in canceled Claim 1 of 'the modified sequence of SEQ ID NO: 1 encoding a modified protein having the equivalent activity of SEQ ID NO: 2. Further, there is no support in the specification for 93% homology, or sequence identity, to the coding region of SEQ ID NO: 1.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's amendments have not clarified what constitutes a nucleotide sequence that encodes an equivalent enzymatic activity represented by SEQ ID NO: 2 such that one would know they were in possession of said sequence, and thus the amendment has not simplified the issues of describing or making the sequences of the claimed invention. Further, Applicant's argument that a vector comprising a nucleotide sequence having at least 93% homology, or sequence identity, to SEQ ID NO: 1 does not take into account that such a sequence could quite possibly be larger than SEQ ID NO: 1 and hence have less than 70% sequence identity to SEQ ID NO: 1 even if it had 93% sequence identity to the coding region of SEQ ID NO: 1 (i.e. nucleotide 130 to 1182).

DAVID T. FOX  
PRIMARY EXAMINER  
GROUP ~~180~~ 1638

A handwritten signature in black ink, appearing to read "David T. Fox", with a large, stylized flourish at the end.